Ingat Kawan (M) Sdn Bhd v Boustead Naval Shipyard Sdn Bhd

HIGH COURT (IPOH) — CIVIL SUIT NO 22NCVC-193–08 OF 2012
HARMINDAR SINGH J
8 MAY 2013

Civil Procedure — Striking out — Writ and statement of claim — Whether consideration and object of agreement entered by parties lawful and valid — Whether claim frivolous, vexatious and abuse of process of court — Rules of Court 2012 O 18 r 19(1)(b) & (d)

Contract — Breach — Agreement — Agreement to remove underground cables — Cables made from scrap metal which were second-hand goods — Issuance of stop-work orders — Whether there was breach of contract — Whether consideration and object of agreement entered by parties lawful and valid — Whether license obtained to remove underground cables which were second-hand goods — Whether requirement under s 10(a) of the Second-Hand Dealers Act 1946 fulfilled — Contracts Act 1950 s 24

Pursuant to an agreement entered with the defendant, the plaintiff purchased and removed 'abandoned LV cables' made of scrap metal, underground for a consideration of RM8,000. The cables were removed and transported from the defendant's premises in seven lorries. However, about a month later, the defendant issued stop-work orders against the plaintiff. Aggrieved, the plaintiff claimed for breach of contract against the defendant. In the present application, the defendant sought to strike out the plaintiff's writ and statement of claim under O 18 r 19(1)(b) and (d) of the Rules of Court 2012 and submitted that the consideration and object of the agreement was unlawful and void under s 24 of the Contracts Act 1950 ('Act') as the plaintiff had no valid license to deal with scrap metal, being second-hand goods, as required by s 10(a) of the Second-Hand Dealers Act 1946 ('Act 189') ('SDA'); and the subject matter of the agreement being 'abandoned LV cables' was also unlawful because it involved or implied injury to the Government of Malaysia.

Held, allowing the application with costs of RM5,000.

(1) No person could deal with second-hand goods unless he or she had a valid license. Although evidence adduced appeared to show that a license was indeed issued to the plaintiff's director, the license was obtained in Selangor while the cables were in Perak. A license given is restricted to a

particular state. If the plaintiff had wanted to deal with second-hand goods in Perak, it ought to have obtained a license from the Chief Police Officer of Perak or his delegate (see paras 12–13).

(2) As there was no license, the object of the agreement was unlawful as it contravened ss 6 and 10 of the SDA and 10 of the SDA. Such a contract was void and unenforceable under ss 24(a) and 25 of the Act. On this ground alone, the plaintiff's claim for breach of contract was obviously unsustainable and was doomed to fail. Since an illegal contract was void and unenforceable, the plaintiff's claim was frivolous and vexatious and an abuse of the court process (see paras 14 & 16).

(3) It was significant that Kementerian Kewangan Malaysia had given its approval for such cables to be disposed of. This ground was insufficient to conclude that the plaintiff's claim was obviously unsustainable (see para 18).

[Bahasa Malaysia summary

Berikutan perjanjian defendan yang ditandatangani dengan plaintif membeli dan mengangkat 'abandoned LV cables' yang dibuat daripada serpihan besi yang terletak bawah tanah untuk balasan sebanyak RM8,000. Kabel diangkat dan diangkut dari premis defendan dengan tujuh lori. Walau bagaimanapun lebih kurang sebulan kemudian, defendan mengeluarkan perintah-perintah berhenti kerja terhadap plaintif. Tidak puas hati, plaintif menuntut untuk kemungkiran kontrak terhadap defendan. Dalam permohonan ini, defendan memohon untuk membatalkan writ dan pernytaan tuntutan plaintif di bawah A 18 k 19(1)(b) and (d) Kaedah-Kaedah Mahkamah 2012 dan berhujah bahawa balasan dan objek perjanjian adalah tak sah dan terbatal di bawah s 24 Akta Kontrak 1950 ('Akta') memandangkan plaintif tidak mempunyai lesen yang sah untuk mengendalikan serpihan besi, sebagai barangan terpakai, seperti yang dikehendaki oleh s 10(a) Akta Peniaga Sekendhend 1946 ('APS'); dan perkara perjanjian 'abandoned LV cables' juga adalah tak sah kerana ia melibatkan atau menjejaskan Kerajaan Malaysia.

Diputuskan, membenarkan permohonan dengan kos sebanyak RM5,000:

(1) Tiada sesiapa yang dibenarkan untuk mengendalikan barangan terpakai kecuali dia mempunyai lesen yang sah. Walaupun keterangan yang dikemukakan menunjukkan yang lesen sememangnya dikeluarkan kepada pengarah plaintif, lesen diperolehi di Selangor sementara kabel berada di Perak. Lesen yang diberikan terhad kepada negeri tertentu. Jika plaintif hendak mengendalikan barangan terpakai di Perak, ia patut mendapatkan lesen daripada Ketua Polis Perak atau wakilnya (lihat perenggan 12–13).

(2) Memandangkan tidak terdapat lesen, objek perjanjian adalah tak sah memandangkan ia bertentangan dengan ss 6 dan 10 APS. Kontrak

sedemikian adalah terbatal dan tidak boleh dikuatkuasakan di bawah ss 24(a) dan 25 Akta. Alasan alasan ini sahaja, tuntutan plaintif untuk kemungkiran kontrak jelas tidak dapat dikekalkan dan ditakdirkan akan gagal. Memandangkan kontrak tak sah adalah terbatal dan tidak dapat dikuatkuasakan, tuntutan plaintif adalah remeh-temeh dan menyusahkan dan penyalahgunaan proses mahkamah (lihat perenggan 14 & 16).

(3) Adalah penting bahawa Kementerian Kewangan Malaysia telah memberi kelulusannya untuk kabel sedemikian dijual. Alasan ini adalah tidak mencukupi untuk memutuskan yang tuntutan plaintif adalah jelas tidak dapat dikekalkan (lihat perenggan 18).]

Notes

For cases on agreement, see 3(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 3106–3137.

For cases on writ and statement of claim, see 2(4) *Mallal's Digest* (4th Ed, 2012 Reissue) paras 8171–8176.

Cases referred to

Asia Television Ltd & Anor v Viwa Video Sdn Bhd and connected cases [1984] 2 MLJ 304, FC (refd)

Curragh Investments Ltd v Cook [1974] 1 WLR 1559, Ch D (refd)

Legislation referred to

Contracts Act 1950 ss 24, 24(a), (d), 25

Rules of Court 2012 O 18 r 19(1)(b), (d)

Second-Hand Dealers Act 1946 ss 2, 3, 6, 9, 10 10(a), 11, Second Schedule

Abdul Roni bin Abd Rahman (Abdul Roni & Co) for the plaintiff.

Duna bt Md Isa (Che Nor Diyana bt Mad Rudi with her) (Azzat & Izzat) for the defendant.

Harmindar Singh J:

THE JUDGMENT (ENCLOSURE 15)

[1] This was an application by the defendant in encl 15 to strike out the plaintiff's writ and statement of claim under O 18 r 9(1)(b) and (d) of the Rules of Court 2012 ('ROC 2012').

THE BACKGROUND FACTS

[2] The background facts are as follows. It was claimed by the plaintiff that by a Sales Order No 21 dated 18 August 2011, the defendant had allowed the

plaintiff to purchase and remove 'abandoned LV cables' from the underground for a consideration of RM8,000. These 'abandoned LV cables' were described as 'metal scrap' by the plaintiff. The plaintiff further claims that pursuant to the agreement they had removed the cables and had been transporting them from the defendant's premises in seven lorries.

[3] However, on 7 September 2011 and 26 September 2011, the defendant issued stop-work orders for the plaintiff to cease any cable removing activities in relation to the Sales Order No 21 ('SO 21') at the defendant's premises. The plaintiff now claims that the defendant is in breach of their contract and seeks the following relief:

(a) general damages;

(b) special damages of RM50,000,000;

(c) interest of 10% on the sum of RM50,000,000 from 7 September 2011 until date of realisation;

(d) interest of 8% on the sum of RM50,000,000 from date of filing of the summon until date of realisation;

(e) costs;

(f) costs; and

(g) any other relief which the honourable court deems as just and fit to order.

THE APPLICATION

[4] The plaintiff in turn filed the application in encl (15) to strike out the writ and the plaintiff's claim. Two grounds were put forward as follows:

(a) the consideration and object of SO 21 is unlawful as the plaintiff has no valid license to deal with scrap metal, being second hand goods, within the Manjung/Lumut District under s 10(a) of the Second-Hand Dealers Act 1946 ('Act 189') and therefore SO 21 is void under s 24 of the Contracts Act 1950 ('first ground'); and

(b) the subject matter of SO 21 being 'abandoned LV cables' is also unlawful because it involves or implies injury to the Government of Malaysia ('second ground').

FIRST GROUND

[5] With regard to the first ground, s 6 of the Second-Hand Dealers Act 1946 ('Act 189') provides:

Licences

6 No person unless exempted from this section shall deal in second-hand goods except in accordance with the conditions of a licence issued under this Act in the form in the First Schedule, and in the place specified in the licence;

Provided that any person who deals exclusively in the goods specified in the Second Schedule or any of them may be granted a licence in the form in the Third Schedule. Sections 7, 12, 13, 15 and 16 shall not apply to such licensee, nor need the licence specify his place of business, but every such licensee shall carry his licence on his person and shall produce the same for inspection at any time on demand by any police officer.

[6] The Second Schedule of Act 189 provides that old iron and metals are second-hand goods within Act. It is not disputed and can hardly be argued otherwise that the 'abandoned LV cables' are second-hand goods as prescribed by the said Second Schedule to Act 189. This would effectively mean that no person can deal with second second-hand goods unless he or she has a valid licence.

[7] The issue of such licences is provided in s 10 of Act 189:

Issue of Licences

10 A licence issued under this Act —

(a) shall be issued by the licensing officer of the area wherein the person licensed carries on business, on payment of the prescribed fee;

(b) shall expire on the thirty-first day of December in the year in which it is issued; and

(c) shall not be transferable except with the consent of the Chief Police Officer and on payment of the prescribed fee,

but in no case shall such a licence be issued unless the finger-prints of the person applying to be licensed have been taken by the licensing officer.

[8] It is to be noted that 'licensing officer' has been defined in s 2 of Act 189 to be 'the Chief Police Officer and includes any police officer to whom he may have deputed his power and under section 3'.

[9] Section 3 of Act 189 in turn provides that '[I]n each State the Chief Police Officer shall be the licensing officer but he may depute his powers in respect of any district of such State to any police officer not below the rank of Inspector'.

[10] To complete the picture such a licence can be cancelled as provided in s 11 of Act 189:

A Cancellation

11 In any State the Menteri Besar or Chief Minister, as the case may be, and in the Federal Territory, the Minister, may at his discretion at any time cancel any licence issued or exemption made under this Act.

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[11] The question now is — did the plaintiff have such a licence? The evidence adduced through the affidavits filed appeared to show that a licence was indeed issued to the plaintiff's director, Raja Jaafar bin Raja Harun, by the *Ketua Polis* Daerah Petaling Jaya authorising him to deal with second-hand C goods at the business address of No 43, Jalan TSB 9A, Taman Industri Sg Buloh, 47000, Sungai Buloh. This licence was valid until 31 December 2011.

[12] The defendant however contended that this was not a valid licence to deal with the abandoned LV cable as the cables were located at the Pengkalan D TLDM at Lumut, Perak. The plaintiff's licence, it was argued, only entitled the plaintiff to conduct such business within Selangor. Are they right?

[13] Considering Act 189 and the provisions that were alluded to at the outset, it is clear that any licence given is restricted to a particular state. It E follows that if the plaintiff had wanted to deal with second-hand goods in the State of Perak, it ought to have obtained a licence from the Chief Police Officer of the State of Perak or his delegatee.

F **[14]** Since there is no such licence obtained by the plaintiff, the object of SO 21 is unlawful as it contravenes ss 6 and 10 of Act 189. Such a contract is void and unenforceable under ss 24(a) and 25 of the Contracts Act 1950 as not only is such a contract forbidden by a law, namely the Act 189, but the consideration and objects are unlawful. In fact, any contravention of s 6 of Act 189 is a criminal offence as provided by s 9 of the same Act.

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[15] In this regard, Abdoolcader FJ in *Asia Television Ltd & Anor v Viwa Video Sdn Bhd and connected cases* [1984] 2 MLJ 304 approved a passage in *Curragh Investments Ltd v Cook* [1974] 1 WLR 1559 which stated:

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> I accept of course, that where a contract is made in contravention of some statutory provision then, in addition to any criminal sanctions, the courts may in some cases find that the contract itself is stricken with illegality. But for this to occur there must be a sufficient nexus between the statutory requirement and the contract. If the statute prohibits the making of contracts of the type in question, or provides that I one of the parties must satisfy certain requirements (eg by obtaining a licence or registering some particulars) before making any contract of the type in question, then the statutory prohibition or requirement may well be sufficiently linked to the contract for questions to arise of the illegality of any contract made in breach of the statutory requirement (per Megarry J (later Vice-Chancellor)).

[16] In the instant case, it can hardly be disputed that there is sufficient nexus between the statutory requirements and the contract for it to be declared illegal. I am therefore constrained to hold that the contract SO 21 is similarly stricken with illegality and is therefore void and unenforceable. On this ground alone, the plaintiff's claim for breach of contract is obviously unsustainable and is doomed to fail.

THE SECOND GROUND

[17] On this ground, the defendant relied on s 24(d) of the Contracts Act 1950 which provides that a consideration or object of a contract can also be unlawful if it involves or implies an injury to the property of another. The defendant claimed that at all material times the abandoned LV cables sought to be removed under SO 21 were owned by the Government of Malaysia. These cables were leased to Naval Dockyard Sdn Bhd ('NDSB') for 34 years vide a lease agreement dated 11 September 1995. NDSB was subsequently taken over by PSL-Naval Dockyard Sdn Bhd ('PSC') and later, the defendant. The defendant contends that any dealing with the abandoned LV cables would imply an injury to the property of the Government of Malaysia and can be reasonably deemed as unlawful consideration under s 24(d) of the Contracts Act 1950.

[18] Be that as it may, it is also significant that by a letter dated 27 August 2010, Kementerian Kewangan Malaysia or the Malaysian Treasury had given its approval for such cables to be disposed of. It was however unclear if the proceeds of such disposal were to be provided to the Treasury. For this reason, this ground alone is insufficient to conclude that the claim of the plaintiff is obviously unsustainable.

THE CONCLUSION

[19] In the circumstances, and for the reasons stated, the contract in the form of SO 21 was an illegal contract. Since an illegal contract is void and unenforceable, the plaintiff's claim is frivolous and vexatious and an abuse of the court process. Another feature of the plaintiff's claim which was quite remarkable was that an alleged breach of contract for a consideration of only RM8,000 could attract a claim in special damages of RM50m. Needless to say, there is something quite unsettling about the whole affair. Accordingly, the application in encl 15 was granted with costs assessed at RM5,000.

Appeal allowed with costs of RM5,000.

Reported by Afiq Mohamad Noor